

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TERRY BOYD,)	
)	
Petitioner,)	
)	
v.)	Case No. 4:04CV1791 AGF
)	
JIM MOORE,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before the Court on Petitioner's Second Motion for Leave to File Objections to the Magistrate Judge's "Report and Order" which was dated March 20, 2008, and which denied Petitioner's habeas petition. Petitioner appears to believe that undersigned Magistrate Judge erred in not informing him that he had ten days to file objections to the Magistrate Judge's Order denying habeas relief. When a case is referred to a Magistrate Judge by a District Court Judge for a Report and Recommendation, the parties have ten days to object to the Magistrate Judge's Report and Recommendation. This case was not before the undersigned Magistrate Judge for Report and Recommendation, however. Rather, the decision in this case was issued after the Magistrate Judge received the consent of both parties to exercise full jurisdiction over the case under 28 U.S.C. § 636(c). (Doc. #9). Accordingly, the Memorandum and Order and accompanying Judgment issued by the undersigned Magistrate Judge on March 20, 2008, represented the District Court's final disposition of the case.

As stated by the Court in ruling on Petitioner's first Motion for Leave to File

Objections to the Magistrate's "Report and Order," a motion filed by Petitioner on September 29, 2008, the deadline for the filing a motion to vacate or amend the Judgment had passed, and in any event, Petitioner's motion was without merit. The Court will construe Petitioner's new motion as a motion for a Certificate of Appealability. Upon review of the record, the Court does not believe that reasonable jurists might find the Court's rejection of Petitioner's claims debatable or wrong, for purposes of issuing a Certificate of Appealability under 28 U.S.C. § 2253(c)(2). See Slack v. McDaniel, 529 U.S. 473, 484-85 (2000) (setting forth the standard for issuing a Certificate of Appealability); Langley v. Norris, 465F.3d 861, 862-63 (8th Cir. 2006) (same).

Accordingly,

IT IS HEREBY ORDERED that Petitioner's second motion for leave to file objections is **DENIED**. [Doc. #18]

IT IS FURTHER ORDERED that a Certificate of Appealability shall not issue in this case.



AUDREY G. FLEISSIG
UNITED STATES MAGISTRATE JUDGE

Dated this 24th day of December, 2008.